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OST-95-206-1



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Order 95-2-57

SERVED FEB 28 1995

Issued by the Department of Transportation
on the 28th day of February, 1995

Applications of:

Continental Airlines, Inc., Delta Air
Lines, Inc., Flagship Airlines, Inc.,
Northwest Airlines, Inc., Trans World
Airlines, Inc., and USAir, Inc.

for Certificates of Public Convenience
and Necessity pursuant to 49 U.S.C.
Section 41102 (U.S.-Toronto)

Dockets

| | |
|-------|-------|
| 50063 | 50081 |
| 50066 | 50064 |
| 50067 | 50083 |
| 50076 | 50084 |
| | 50085 |

Applications of:

Alaska Airlines, Inc., American
Airlines, Inc., America West,
Continental Airlines, Inc., Delta Air
Lines, Inc., Northwest Airlines, Inc.,
Reno Air, Trans World Airlines, Inc.,
and United Air Lines, Inc.

for Certificates of Public Convenience
and Necessity pursuant to 49 U.S.C.
Section 41102 (U.S.-Vancouver)

Dockets

| | |
|-------|-------|
| 50079 | 50071 |
| 50065 | 50080 |
| 50074 | 50055 |
| 50061 | 50059 |
| 50070 | 50056 |

U.S.-Toronto Service Proceeding

Docket 50168 ✓

U.S.-Vancouver Service Proceeding

Docket 50169

INSTITUTING ORDER

By Notice dated December 22, 1994, we solicited, *inter alia*, certificate applications from U.S. carriers interested in providing new services in the U.S.-Vancouver and -Toronto markets. These applications were solicited in anticipation of new opportunities that would result from the conclusion of a new air services agreement between the U.S. and Canada. The opportunities anticipated were spelled out in a detailed framework for negotiations ("Framework") agreed by representatives of the two countries on December 22, 1994.¹ These opportunities were subsequently confirmed in the Air Transport Agreement Between the Government of Canada and the Government of the United States (Agreement) signed in Ottawa on February 24, 1995.

Among other expanded economic opportunities in the U.S.-Canada aviation market, the Agreement provides that new service to Vancouver is to be phased in for U.S. carriers over a two-year period, and new service to Toronto is to be phased in over a three-year period.² At Vancouver, during each of the first two years from the date of the Agreement, the U.S. is able to designate six additional carriers, with each carrier able to operate two daily round-trip frequencies. At Toronto, during each of the first two years from the date of the Agreement, the U.S. is able to select up to two additional carriers, with each carrier able to operate up to two daily round-trip frequencies. For the third year, the U.S. is able to select up to four more carriers, with each carrier able to operate up to two daily round-trip frequencies.³ With the exception of Washington National Airport, which is subject to separate provisions, any U.S. points and carriers can be selected, including existing gateways and incumbent carriers.

The December 22 Notice, as amended by Notices dated December 29, 1994, and January 9, 1995, established procedural dates for the filing of all certificate applications, answers and replies.⁴ Among other things, we indicated that route authority applications were to be filed separately for each of the restricted Canadian points, and also emphasized that certificate applications for long-term authority would be processed using expedited show-cause procedures, while *pendente lite* exemption applications for service during the first year would be considered in order to ensure full use of the new bilateral opportunities as soon

¹ Framework for Resumption of Canada-U.S. Transborder Air Negotiations.

² Other provisions of the Agreement provide for additional U.S. route and service opportunities through the splitting and redesignation of coterminal routes, the removal of required intermediate stops, and formulas for the matching of new Canadian service.

³ A designation for the second year under these provisions cannot be used to increase the number of frequencies available to a carrier awarded authority for the first year, but a designation for the third year can be so used, up to a maximum of four daily round-trip frequencies.

⁴ Certificate applications were to conform to the filing requirements of Part 302, Subpart Q, of the Department's regulations.

as possible.⁵ We also emphasized that our *pendente lite* exemptions would be without prejudice to our decisions on long-term authority. No party to this proceeding has raised objections to these procedures.⁶

Applications

Pursuant to the Notices, certificate applications to serve Vancouver were filed by Alaska Airlines ("Alaska"), American Airlines, Inc. ("American"), America West Airlines ("America West"), Continental Airlines ("Continental"), Delta Air Lines ("Delta"), Northwest Airlines, Inc. ("Northwest"), Reno Air ("Reno"), Trans World Airlines, Inc. ("TWA"), and United Air Lines ("United"). Certificate applications to serve Toronto were received from Continental, Delta, Flagship Airlines d/b/a American Eagle ("Flagship"), Northwest, TWA, and USAir, Inc. ("USAir"). In each market, the number of licenses requested exceeds the number that we are able to award under the Agreement. As a result, allocation of the economic authority in each of these restricted markets must be decided in a comparative carrier selection proceeding. Accordingly, we have decided to institute the *U.S.-Vancouver Service Proceeding*, Docket 50169, and the *U.S.-Toronto Service Proceeding*, Docket 50168*.

Structure

In the Supplemental Notice served December 29, 1994, applicants were invited to comment in the answers and replies to the applications on how the subsequent selection proceeding(s) should be structured. Answers to the applications were received from Alaska, America West, Continental, Delta, Flagship, Northwest, Reno, TWA, United, and USAir. Replies were received from American, America West, Continental, Delta, Flagship, Reno, United, USAir, and Valujet Airlines, Inc. ("Valujet").

Of the carriers commenting on how the cases should be structured, all but Continental indicated that first-year proposals in each of the contested markets should be evaluated separately and awarded before second and (for Toronto) third year proposals are considered. The carriers argue that separation of the proceedings in such a manner is necessary to allow applicants to evaluate their second and third year applications in light of the authority awarded for the first year. The carriers also argue that such a structure would ease their evidentiary burden and simplify the arguments. Continental, without articulating any rationale, suggested that we consolidate the certificate applications for both first

⁵ *Pendente lite* exemption applications were due by January 12, answers due by January 19, and replies due by January 24, 1995. *Pendente lite* exemptions were issued by Orders 95-2-52, 95-2-53, and 95-2-54, issued on February 27, 1995.

Certificate applications were due January 19, answers due by January 26, and replies due by January 31, 1995.

⁶ Authority issued by exemption is without prejudice to the decision in the certificate proceedings.

and second year services to Vancouver in one proceeding, and to Toronto in another, and issue orders to show cause tentatively awarding first and second year certificate authority.⁷

After careful consideration of the applications filed and the comments of the applicant carriers, and taking into consideration our own goals for ensuring prompt use of the available route rights during the transitional service period, we have decided to institute certificate proceedings for service to Vancouver and Toronto for the first year carrier selections only. Accordingly, the *U.S.-Vancouver Service Proceeding* will consider the selection of six primary carriers to provide scheduled combination service between the U.S. and Vancouver, as provided in the Agreement. The *U.S.-Toronto Service Proceeding* will consider the selection of two primary carriers to provide scheduled combination service between the U.S. and Toronto, as provided in the Agreement. Each case will also consider appropriate backup awards.

As we have already invited applications for the new U.S.-Canada route opportunities by Notice dated December 22, 1994, we will not provide a further opportunity for carriers to file applications for the new authority at issue. We will consolidate the applications to serve each of the markets beginning in the first year into the respective proceedings instituted by this order. As described more fully below, we will put the proceeding on an expedited schedule.

We will dismiss without prejudice the applications and parts of applications requesting second year authority to serve Vancouver and second and third year authority to serve Toronto. We currently intend to initiate service proceedings for second and third year authority shortly after the conclusion of the service proceedings instituted by this order. This action will allow all interested carriers to reformulate their requests for authority to serve the markets in question beginning after the first year in light of the authority granted in the first year cases.

Authority

We will award the U.S.-Vancouver and U.S.-Toronto authority at issue in the form of temporary, experimental certificates of public convenience and necessity under 49 U.S.C. section 41102. The duration of the authority awarded will be five years for the primary carriers and one year for the backup carriers, unless the latter authority is activated during that time, in which case it will continue for five years.

In selecting carriers to provide the service at issue, our principle objective will be to maximize the public benefits that can be expected to result from awarding new authority. In this regard, we will place primary emphasis on the effects of the

⁷ Consolidated Reply of Continental, at 2-3.

applicants' service proposals on the overall market structure and the level of competition both between U.S. and Canadian flag carriers and among U.S. flag carriers in the U.S.-Vancouver and -Toronto markets, and any other market(s) shown to be relevant, in order to promote an air transportation environment that will sustain the greatest public benefits. We will also consider which carriers will be most likely to offer and maintain service that provides the maximum benefits to the traveling and shipping public. We will consider the applicants' fare proposals, and other factors historically used for carrier selection where they are relevant.

United and Continental have recommended that, in order to maximize the use of scarce bilateral route authority, we issue the temporary, experimental certificates with 45-day dormancy provisions. The dormancy provision would act to cause the authority to automatically expire and therefore be available for award to another carrier if service is not provided for a 45-day period. United and Continental argue that such a provision will assure that the valuable U.S.-Canada opportunities secured "do not go wasted."⁸ No carrier opposed the suggestion. Based upon the need to maximize the use of scarce economic opportunities in these newly expanded markets, we tentatively concur with the recommendation and therefore anticipate that the authority issued will have some dormancy provisions, similar to those we imposed as a condition on U.S.-Mexico route authority.⁹ We specifically invite comment, however, on the duration of the dormancy provisions during the presentation of the carriers' cases.

Evidence Requested

As noted in the Supplemental Notice served December 29, 1994, evidence requested thus far has been limited to that required by Part 302, Subpart Q of our regulations. To develop a comparative basis for selecting among the carriers in this proceeding, we will require the submission of certain information, as detailed in Appendix A. Submissions should contain specific factual information so that further clarification is not necessary. The sources and methodology used for all traffic, revenue and expense estimates should be clearly explained.

Applicants are also free to provide such additional information as they consider useful in helping us make our decision. Carriers with applications already on file in either the referenced certificate application dockets or in the *pendente lite* exemption application dockets that contain the required information need not submit additional information, unless they wish to supplement or amend their requests as a result of changed circumstances.

⁸ Reply of Continental, at 4-5. See also, Reply of United, at 4.

⁹ See Order 88-10-30, at 7-8.

Procedural Schedule

In view of our desire for a timely decision in these cases, we intend to conduct the proceedings instituted here according to the following schedule:

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|--------------------------------------|----------------|
| Direct Exhibits due: | March 14, 1995 |
| Rebuttal Exhibits due: | April 4, 1995 |
| Briefs to the DOT Decisionmaker due: | April 25, 1995 |

All dates indicated are delivery dates. Eight copies of all submissions are to be received at the Department Docket Section no later than the dates indicated.¹⁰ Exhibits and briefs will afford ample opportunity to present evidence and arguments.

ACCORDINGLY:

1. We institute the *U.S.-Vancouver Service Proceeding* and the *U.S.-Toronto Service Proceeding*, which will be decided by non-oral hearing procedures under Subpart Q of our regulations;
2. We consolidate the first-year service applications of Alaska, American, America West, Continental, Delta (Docket 50070 only), Northwest, Reno, TWA, and United for certificate authority to serve U.S.-Vancouver into Docket 50169, the *U.S.-Vancouver Service Proceeding*;
3. We consolidate the first-year service applications of Continental, Delta (Docket 50066 only), Northwest, TWA, and USAir for certificate authority to serve U.S.-Toronto into Docket 50168, the *U.S.-Toronto Service Proceeding*;
4. The proceedings instituted in ordering paragraph 1 shall consider the selection of six primary carriers to provide scheduled combination service between the U.S. and Vancouver, and two primary carriers to provide scheduled

¹⁰ A computer diskette copy of all exhibits and briefs prepared using electronic spreadsheet or word processing programs should also be filed with the Economic & Financial Analysis Division of the Office of Aviation Analysis, Room 6401, 400 Seventh Street, S.W., Washington, D.C. 20590. Diskettes should be DOS-formatted. Exhibits and briefs prepared with Microsoft Exel (version 5.x or earlier), Lotus 1-2-3 (version 3.x or earlier), Microsoft Word (version 6.x or earlier), or WordPerfect (version 5.2 or earlier) should be filed in their native formats. Parties may also file exhibits and briefs via e-mail to our Internet address: dot_dockets@postmaster.dot.gov. Files sent via e-mail should be in ASCII (text only) format. Parties using other software may either (1) file exhibits and briefs in the foregoing formats, or (2) contact Mr. William C. McCamant at (202) 366-1041 or Mr. Timothy E. Carmody at (202) 366-2348 for format compatibility information or to seek a waiver, which will be considered on an *ad hoc* basis. Submissions in electronic form will assist the Department in quickly analyzing the record and preparing its decision. The paper copy, however, will be the official record.

combination service between the U.S. and Toronto, respectively; we will also consider the selection of appropriate backup carriers and what terms, conditions, and limitations, if any, should be placed on any authority awarded in these proceedings;

5. We dismiss without prejudice the applications of TWA (Docket 50059) and Delta (Docket 50071), and those portions of the applications of Alaska, American, America West, Northwest, Reno and United that request certificate authority to serve U.S.-Vancouver in the second year;

6. We dismiss without prejudice the applications of Delta (Docket 50067 only) and Flagship (Docket 50076), and those portions of the applications of Delta, Northwest and USAir that request certificate authority to serve U.S.-Toronto in the second and third years;

7. To the extent not granted, deferred or dismissed, we deny all requests in the captioned dockets; and

8. We will serve a copy of this order on all parties in the captioned dockets.

By:

PATRICK V. MURPHY
Acting Assistant Secretary for Aviation
and International Affairs

(SEAL)

EVIDENCE REQUEST

I. Public Disclosure of Data

Pursuant to sections 241.19-6 and 399.100 of the Department's regulations, it is determined that the Department's T-100 data for the period January 1, 1991, through final Department decision in this proceeding, and the Combined Transborder Origin & Destination Survey Data (Data Bank 9) for the period January 1, 1987, through final Department decision in this proceeding, for operations between the United States and Canada, are material and relevant to a final determination of the issues in this case. Those data have been released to the U.S. carriers and U.S. non-airline civic and governmental parties to this proceeding, who will be free to use those data to the extent they deem necessary.

II. Procedures and Ground Rules

In the interest of a complete and adequate record, the parties should submit the following information in the form of exhibits. The exhibits should contain sufficient detail, including sources, bases, all assumptions, and methodology, so that, without further clarification, any party can derive the final results from the basic data.

III. Request for Information and Evidence

A. Information Responses

DOT Data

The Economic & Financial Analysis Division of the Office of Aviation Analysis has made available to the parties the following data in the form of information responses:¹

¹ The Department's Information Responses were previously made available to the parties involved in the U.S.-Canada exemption proceedings in response to the Department's December 22, 1994, notice. The Department's original information responses included T-100 data through the third quarter of 1994 and Combined Transborder O&D data through the fourth quarter of 1993. The Department will update its information responses to include T-100 data through the fourth quarter of 1994 and Combined Transborder O&D data through the second quarter of 1994. The Department will make this material available no later than March 3, 1995.

Due to the volume of this material, we will be unable to print and distribute copies to the parties. One copy of these materials will be made available for the parties' use in Room 4201, 400 Seventh Street, S.W., Washington, D.C. In addition, the Department will issue on request copies of the information responses on computer diskettes. Parties who have not received a diskette version of previously issued information responses, or who wish to receive diskette versions of updated information responses, should contact the Economic & Financial Analysis Division, at (202)366-2344.

Use of the data contained in the Department's Information Responses (either from hard-copy or computer diskette) is restricted to representatives of applicant carriers and interested U.S. parties (*i.e.*, those that have filed applications or comments) in this proceeding for use only in this proceeding for those who have filed affidavits, so stating, with the Office of Aviation Analysis, Economic & Financial Division, at (202) 366-2344.

(a) T-100 nonstop segment data, by month, beginning January 1, 1991, through the latest available month, between the United States, on the one hand, and Montreal, Toronto, and Vancouver, Canada, on the other.

(b) T-100 on-flight market data, by month, beginning January 1, 1991, through the latest available month, between the United States, on the one hand, and Montreal, Toronto, and Vancouver, Canada, on the other.

(c) For the Calendar Years 1987 through 1993, O&D traffic from Table 15 of the Combined Transborder O&D Survey between the United States, on the one hand, and Montreal, Toronto, and Vancouver, Canada, on the other.

B. Direct Exhibits

The applicant carriers are directed to provide the sources, in exhibit form, for their traffic forecast. This information shall be set forth in such a manner that any other party could construct a traffic forecast from the exhibits without the necessity of having the actual source document at hand, particularly if the source is other than the Department's O&D Survey. Indicate growth rates, stimulation rates, and participation rates, as well as the bases for such rates.²

The source data for traffic forecasts made by any party shall be (1) the Combined O&D Survey and/or (2) the U.S. International Air Travel Statistics (commonly referred to as INS Data), or (3) a combination of these data sources. Any party may provide a separate, additional forecast based on other source data (*e.g.*, T-100 data) if it wishes, but if so, that party should clearly explain the differences between its data source and the two specified above (*e.g.*, differences in collection methods, or adjustments made to raw data).

1. Applicant Carriers

Submit, at a minimum, the following:

(a) Firm date for instituting service in the market, a breakdown for peak and off-peak seasons, and single-plane and nonstop-to-nonstop connecting schedules proposed to be operated in the forecast year (12 months ending March 1996). Schedules should contain flight numbers, complete routings from origin to destination (including behind-gateway and beyond-gateway points), departure and arrival times, equipment types (including seat configuration by class of service), days scheduled, classes of service offered, and the limitations, if any, on the number of seats available for each class of service;

(b) Estimated startup costs, including a description of what such costs include;

(c) Separate passenger traffic forecasts on an O&D market-by-market (city-pair) basis (single-plane and online connecting and, to the extent possible, interline connecting) for the 12 months ending March 1996. The forecasts should be based

² The base year for traffic forecasting purposes should be 12 months ended December 1993, and the forecast year should be the 12 months ended March 1996.

upon the applicant's proposed schedules and should detail specifically the data sources of all traffic. Include any anticipated traffic changes in other markets on the applicant's existing system in which service will be altered as a result of the proposal in this case. The basis for any forecasting technique used should be clearly explained. Indicate any anticipated seasonal fluctuations;

(d) Proposed fares in U.S. dollars in markets in which single-plane service is proposed (by fare type and with a description of all fare conditions/restrictions), including a breakdown for peak, off-peak, and shoulder season, and by direction.³ All proposed fares should be those which the carrier would have offered on April 1, 1994, had it been offering service in the U.S.-Canada market on that date.⁴ (Do not allow for inflation, SFFL fare adjustments, or any upward fare flexibility to the forecast year.) Include a percentage distribution of passengers forecast for each fare type proposed for each market and explain the basis for the distribution by fare type. Show the weighted average fare including first and business class, and, separately, without first and business class. Separately indicate the dilution from joint fares or other factors not directly related to discount fare offerings. (See page 5 of this appendix for summary format.) Explain the basis for any fare stimulation estimate;

(e) The net revenue anticipated from the proposed service for the forecast year. This estimate is to be based on: (1) the traffic forecast in paragraph (c) above; and (2) the fares proposed in paragraph (d) above. Explain the derivation of all dilution factors used in each revenue estimate;

(f) A *pro forma* profit and loss statement for the forecast year based on the above traffic and revenue projections. All expense estimates should be based on the Form 41 functional account method, and all unit costs should be for the 12 months ended September 1994, and should be the carrier's Domestic/Trans-Border Entity unit costs. (Do not allow for inflation to the forecast year.)⁵ Foreign currency conversion values for the estimates, where applicable, should be based on the exchange rates of US \$1.00 = Canadian \$1.3883 (the exchange rate for April 1, 1994, as stated in the April 4, 1994, *Wall Street Journal*);

(g) An indication whether or not the aircraft to be used in the proposed schedules are on hand or on order. If on hand, indicate where and to the extent to which those aircraft are currently being used. If on order by purchase or lease, indicate

³ Also show similar fare data for on-line connecting markets (city-pairs) where those markets account for 10 percent or more of the applicant's forecast traffic.

⁴ Separately show the dollar and percent reduction, if any, of all proposed fares, by category and by market, from the fares in effect on April 1, 1994. The April 1, 1994, date is the mid-point of the cost year (12 months ended September 1994).

⁵ To the extent any cost estimates differ from costs shown in the carrier's Form 41 Reports (Domestic/Trans-Border entity) for the 12 months ended September 1994, those differences should be fully explained. If any applicant in this proceeding does not (a) have Form 41 Reports on file with the Department, (b) have the type of aircraft proposed to be operated in its current fleet, or (c) report data for the Domestic/Transborder entity, all expense estimates should nonetheless be based on DOT Form 41 functional methods, and the bases for those estimates should be fully explained.

when they will be delivered and how the aircraft will be financed. Indicate whether the aircraft to be used comply with FAR-36. If not, indicate plans for achieving compliance;

(h) Estimated number of gallons of fuel to be consumed by aircraft type in the forecast year as a result of the proposed service;

(i) A description of any code-sharing agreements with foreign carriers providing for the applicant's proposed service to be marketed under the foreign carrier's codes, or for U.S.-Canada service operated by the foreign carrier to be marketed under the applicant's code, including a description of integrated connecting services to be provided by the applicant's code-sharing partner(s).⁶

(j) A map showing how the applicant's existing route structure would feed into its proposed service; and

(k) Responses to the following interrogatories:⁷

(1) Will the carrier, if selected as backup, accept a condition in its certificate which (a) permits it to implement authority within the first year should the primary carrier withdraw from the market, and (b) expires at the end of one year should the authority not be activated?

(2) Will the carrier selected for primary authority accept a condition in the certificate requiring institution of service by a date specified by the Department? What date should the Department specify?

⁶ Traffic forecasts under III.B.1(c), *supra*, should separately show connecting feed from the applicant's foreign-flag code-sharing partner(s).

⁷ Any certificate issued in this case for primary authority will be for five years' duration, and any backup certificate issued will be for one year.